

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HOPE NICOLE HAWK, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MELISSA LYNETTE HAWK,

Respondent-Appellant.

UNPUBLISHED

February 1, 2007

No. 271029

Wayne Circuit Court

Family Division

LC No. 04-435262-NA

Before: Saad, P.J., and Cavanagh and Schuette, JJ.

PER CURIAM.

Respondent Melissa Lynette Hawk appeals as of right from the trial court's order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. FACTS

Respondent is the mother of three children. Her parental rights were terminated as to her youngest child, Nicole Hawk, in May 2006. At adjudication, respondent admitted that her crack addiction and alcohol use had interfered with her ability to care for her children. She also admitted that she did not obtain prenatal care, did not earn adequate income to support herself and this child, did not have housing of her own, and did not have custody of her two other children. At the bench trial, which occurred 17 months after the child was removed from respondent's care, her evasive testimony and repeated denials demonstrated that she had not yet accepted responsibility for her issues. One of the few things she did admit was that the child had been born testing positive for cocaine. Clear and convincing evidence presented at the bench trial established that respondent had failed to comply with almost all of the treatment plan's requirements. She had partially complied with her substance abuse requirement and fully complied with the parenting class requirement, but she had not complied at all with the housing and employment requirements.

II. STATUTORY GROUNDS FOR TERMINATION

A. Standard of Review

Termination of parental rights is appropriate where petitioner proves by clear and convincing evidence at least one ground for termination. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). Once this has occurred, the trial court shall terminate parental rights unless it finds that the termination is clearly not in the best interests of the children. *Id.* at 364-365. This Court reviews the trial court's findings under the clearly erroneous standard. MCR 3.977(J); *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). A finding of fact is clearly erroneous if a reviewing court has a definite and firm conviction that a mistake was made, giving due regard to the trial court's special opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

B. Analysis

The trial court did not clearly err in finding that the statutory grounds required under MCL 712A.19b(3)(c)(i) and (g) were established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, *supra* at 356. Under MCL 712A.19b(3)(c)(i), the court may terminate parental rights where the court finds that the "conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." In this case, parental rights were terminated because respondent continually failed to take responsibility for her actions regarding her child. Respondent also continued to test positive for drugs and alcohol, failed to give drug screenings, did not show up to all the proceedings regarding her parental rights, failed to secure permanent housing for herself, and failed to comply with the court order to get a permanent job. Therefore, the trial court did not clearly err in terminating respondent's parental rights under MCL 712A.19b(3)(c)(i).

Further, MCL 712A.19b(3)(g) allows termination of parental rights when "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." In this case, the trial court cited respondent's lack of commitment to a drug treatment plan, obtaining permanent employment, and her failure to secure permanent housing for herself, let alone her child. Accordingly, the trial court did not err in terminating respondent's parental rights under MCL 712A.19b(3)(g).

Finally, because this Court has already established that there are two legitimate statutory grounds for termination of parental rights, we need not examine whether the trial court erred in terminating parental rights under MCL 712A.19b(3)(j). *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Although respondent argues that failure to complete a treatment plan is not outcome determinative in a termination proceeding, as stated by this Court in *In re Bedwell*, 160 Mich App 168, 176; 408 NW2d 65 (1987), citing *In re Draper*, 150 Mich App 789, 801-802; 389 NW2d 179 (1986), the trial court in this case did not base its termination order upon the mere fact that the treatment plan had not been completed. Rather, the trial court found that the evidence that established respondent's noncompliance with the treatment plan also established the statutory grounds for termination set forth in MCL 712A.19b(3)(c)(i), (g), and (j). This finding was not clearly erroneous. MCR 3.977(J); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

Respondent also alleges various failures by petitioner, which she claims contributed to or caused her failure to comply with certain requirements of the treatment plan. However, the evidence showed that petitioner offered help with bus tickets and housing information, and that respondent was the party who lost or misplaced the Alcohol Anonymous/Narcotics Anonymous verification sheets. And although there was no evidence regarding petitioner's assistance with respondent's employment, there also was no evidence that respondent requested such assistance. Further, petitioner's failure to provide a valid referral card, which prevented respondent from supplying drug screens after November of 2005, did not erase the fact that respondent continued to have unstable housing and employment by the time of the bench trial.

III. BEST INTERESTS OF THE CHILD

A. Standard of Review

Once a statutory ground for termination is established by clear and convincing evidence, the trial court must terminate parental rights unless termination clearly is not in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 353. The trial court's decision on the best interests question is reviewed for clear error. *In re Trejo, supra* at 356-357.

B. Analysis

The evidence did not show that termination of respondent's parental rights was clearly not in the best interests of the child. MCL 712A.19b(5); *In re Trejo, supra* at 356-357. To the contrary, the child was over two years old at the time of the bench trial, had been in the court's temporary custody for 17 months, and should not be made to wait another 17 months on the chance that respondent may decide to do the hard work of addressing her issues with drug abuse. Respondent had been given ample time to provide a stable environment for her child, and she continually failed to do so. Therefore, the trial court did not err in concluding that termination of respondent's parental rights was not against the child's best interests in this case.

IV. EFFECTIVE ASSISTANCE OF COUNSEL

Finally, respondent argues that she was deprived of effective assistance of counsel during the termination proceedings. We disagree.

A. Standard of Review

The determination of whether a party received ineffective assistance of counsel is subject to de novo review. *In re CR*, 250 Mich App 185, 197; 646 NW2d 506 (2001).

B. Analysis

Respondent argues that she was deprived of effective assistance of counsel when her substitute counsel did not request a review of the referee's recommendation at the permanency planning hearing. However, because there was clear and convincing evidence of at least two statutory grounds for termination, respondent has failed to show that the outcome in this case would have been any different had respondent's counsel acted differently. *People v Pickens*, 446

Mich 298, 303, 309, 338; 521 NW2d 797 (1994) (holding that the reversal is justified when “counsel’s performance [falls] below an objective standard of reasonableness, and . . . the representation so prejudiced the defendant as to deprive him of a fair trial.”). *Id.* Respondent’s argument also fails with respect to the absence of certain witnesses at the bench trial because she fails to explain how the testimony of those witnesses would have assisted her case. *Id.* Lastly, contrary to her claims on appeal, respondent’s counsel did present evidence regarding the issue of the child’s best interests.

Affirmed.

/s/ Henry William Saad

/s/ Mark J. Cavanagh

/s/ Bill Schuette